fire in removing wounded from the front line trenches. He died in France, December 15, 1918.

THE RETIREMENT OF DEAN TAYLOR

The retirement of Dr. Edward Robeson Taylor from the Deanship of Hastings College of the Law and his designation as Emeritus Professor of Law terminate a twenty-year period of distinguished service in that institution. In the letter tendering his resignation, Dr. Taylor says, referring to the portion of his life devoted to the work of legal education, "These years I estimate as the best and the most interesting of my life, and nothing but increasing age tempts me to my present course." Rarely does it fall to the lot of one man to excel in so many and so various pursuits as Dr. Taylor has done—law, literature, politics, education. His testimony therefore as to the satisfaction derived from his work as educator is of peculiar interest. The richness of Dr. Taylor's personality, his generous passion for justice and right, found expression in the teacher, and not only have endeared him to hundreds of pupils but have imparted to them something of the influence of his own character.

The Board of Trustees of Hastings College of the Law has named as the new Dean, Dr. Maurice E. Harrison, lecturer in law at the School of Jurisprudence in this University, a graduate of this school with the degree of Juris Doctor in 1910.

Comment on Recent Cases

BANKER'S LIEN.—By statute in California, "a banker has a general lien dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business".[1] A similar remedy is given to banks almost everywhere. The theory upon which the right is allowed is that a credit has been extended by the bank upon the securities of the customer which the bank holds or expects to hold in the ordinary course of business.[2] It does not exist until the debt to the bank has matured,[3] unless the customer has consented that it shall,[4] or there has been fraud

[1] Civ. Code § 3054.

[2] The Bank of the Metropolis v. The Bank of New England (1843) 1 How. 234, 11 L. Ed. 115; Russell v. Hadduck (1846) 3 Gilman (Ill.) 233; Furber v. Dane (1909) 203 Mass. 108, 89 N. E. 227.

[3] Jordan v. National Shoe etc. Bank (1878) 74 N. Y. 467, 30 Am. Rep. 319; Elzy v. Morrison (1913) 180 Ill. App. 711.

[4] Roe v. Bank of Versailles (1902) 167 Mo. 406, 67 S. W. 303; Commercial National Bank v. Brinton (1914) 45 Utah 265, 145 Pac. 42.

on his part,[5] or he is insolvent.[6] Nor will the bank generally be allowed to set off its claim against the customer's deposit, unless the claim is certain, definite, and liquidated, or else capable of liquidation by calculation without the intervention of a jury to estimate the sum;[7] and the almost universal rule is that a bank has no lien on property delivered to it as security for a particular debt[8] or for a specific purpose.[9] When the object for which the property was delivered has been accomplished it is the duty of the bank to return it. This rule remains unchanged under the California Code.[10] Equities of third parties in the property deposited will not prevail over the rights of the bank, unless it had notice of them.[11] So where one bank takes notes indorsed to itself for collection and transmits them to another to balance a mutual account the second bank may hold them as against the real owner for any balance due it from the first.[12] But this is not true if the second bank takes them merely as agent for collection.[13] If the bank is garnished it has the same rights against the garnishor that it had against the debtor[14] and it has been held in California that the lien exists as against the guarantor of a note.[15] Because of the provision of our code[16] the bank may not apply the customer's property in satisfaction of a debt secured by mortgage,[17] though it may if the debt is secured by pledge.[18]

In *First National Bank of Corona v. Coplen*[19] and former California decisions on this subject the courts have applied the above code section[20] without distinguishing between the case

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[5] Bradley v. Seaboard Natl. Bank (1901) 167 N. Y. 427, 60 N. E. 771.

[6] Thomas v. Exchange Bank of Angus (1896) 99 Iowa 202, 68 N. W. 780; Schuler v. Israel (1886) 120 U. S. 506, 30 L. Ed. 707, 7 Sup. Ct. Rep. 648.

[7] Tallapoosa County Bank v. Wynn (1911) 173 Ala. 272, 55 So. 1011.

[8] Masonic Savings Bank v. Bangs, Adm'r. (1886) 84 Ky. 135. Reynes v. Dumont (1888) 130 U. S. 354, 32 L. Ed. 934, 9 Sup. Ct. Rep. 486.

[9] Hanover National Bank v. Suddath (1909) 215 U. S. 110, 54 L. Ed. 115, 30 Sup. Ct. Rep. 58.

[10] Bell v. Bank of California (1908) 153 Cal. 234, 94 Pac. 889.

[11] Central National Bank v. Connecticut etc. Insurance Co. (1881) 104 U. S. 54, 26 L. Ed. 693.

[12] Bank of Metropolis v. New England Bank, supra, n. 2.

[13] American Exchange National Bank v. Thuemmler (1900) 94 Ill. App. 622.

[14] Schuler v. Israel, supra, n. 6.

[15] Melander v. Western National Bank (1913) 21 Cal. App. 462, 132 Pac. 265.

[16] Code Civ. Proc. § 726.

[17] McKean v. German American Savings Bank (1897) 118 Cal. 334, 50 Pac. 656; Gnarini v. Swiss American Bank (1912) 162 Cal. 181, 121 Pac. 726.

[18] Marble Company v. Merchants National Bank (1911) 15 Cal. App. 347, 115 Pac. 59.

[19] (Feb. 5, 1919) 28 Cal. App. Dec. 251, 179 Pac. 708.

[20] Supra, n. 1.

where the bank had property of the customer in its possession and where the right was attempted to be exercised against a general deposit. Special deposits, chattels, valuables and the like which are in the possession of the bank and which it is under obligation to return exactly as received, clearly come within its provisions. The property remains in the customer and is subject to the lien. But a general deposit is on an entirely different basis. When such deposit is made the money becomes the property of the bank absolutely and the relation between the depositor and the bank is that of debtor and creditor.[21] The depositor becomes the owner of a chose in action and it would not seem to be property of his in the possession of the bank, on which the bank could have a lien. A better theory on which to allow this remedy against a general deposit would be that the bank has a right to offset its indebtedness against that of the customer.[22] Such a right exists independently of the above statute, which by its terms can hardly be said to cover the case of a general deposit, and would not involve the rather anomalous situation of a bank having a lien on its own debt.[23]

The nature of this right may become of practical importance. Take the case, for instance, where the bank holds a note of its customer on which there is a surety. The note comes due and at the same time the principal has a general deposit in the bank. If it has a lien against this deposit for the amount of the note it cannot pay it out without releasing the surety. On the other hand if the bank has merely a right of set-off it may pay its customer's checks and still retain all its rights against the surety.[24]

P. S. M.

BILLS AND NOTES: EFFECT OF WAIVER OF PRESENTMENT: LIABILITY OF ACCOMMODATION INDORSERS INTER SE.—In *Hurlbut v. Quigley*,[1] the first of three accommodation indorsers, who had been compelled to pay to a creditor bank a note by a corporation in which all three were stockholders and officers, sued the last indorser for contribution. The note had been made under an arrangement with the bank that it should be secured by the three stockholders as sureties. The defendant claimed that he was a successive indorser because he had indorsed the

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[21] Smith's Cash Store v. First National Bank (1906) 149 Cal. 32, 84 Pac. 663.

[22] Wynn v. Tallapoosa County Bank (1910) 168 Ala. 469, 53 So. 228; Shuman v. Citizens State Bank of Rugby (1914) 27 N. D. 599, 147 N. W. 388, L. R. A. 1915A 728; Furber v. Dane, supra, n. 2.

[23] But see 9 Harvard Law Review, 146.

[24] The Second Nat'l Bank of Lafayette v. Hill (1881) 76 Ind. 223, 40 Am. Rep. 239.

[1] (April 25, 1919) 57 Cal. Dec. 400, 180 Pac. 613.